IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.63 OF 2005

...

Mr.Ramchandra Parshuram Nikam ...Petitioner

v/s.

The Saraswat Co.operative
Bank Ltd. & ors. ...Respondents

...

Mr.S.R.Mishra for the Petitioner.
Mr.Y.R.Naik i/b Prashant Naik for the Respondents.

...

CORAM: D.K.DESHMUKH, J.

DATED: 28TH FEBRUARY,2005

P.C.:

1. By this petition filed under Section 34 of the

Arbitration & Conciliation Act, 1996 the Petitioner challenges the award dated 24-8-2004. By that award the claim filed by the Petitioner challenging the appointment of the Respondent No.2 as auditor of the Respondent No.1/bank was dismissed. That challenge was made under Section 84(i)(b) of the Multi State Co-operative Societies Act, 2002. This challenge to the appointment of the Respondent No.2 as auditor of the Respondent No.1/ bank raised by the Petitioner failed. Admittedly the Petitioner feeling aggrieved by that award filed arbitration petition No.396 of 2004. That petition came up for hearing before the Court on 15th December, 2004. It appears that the appointment of the Respondent No.2 as auditor by the resolution of the Annual General Meeting dated 5th July, 2003 was for a period of one year which was to end on 31-3-2004. On 15th December, 2004 when the petition came before this Court, the period for which the Respondent No.2 was appointed as an auditor had come to an end i.e. on 31-3-2004. In that petition following order was made:

> Mr.Mishra the learned Counsel appearing on behalf of the Petitioner states that in view of the expiry of auditor’s period of

31-3-2004 he seeks to withdraw the present petition. Mr.Mishra contends that he desires to challenge the subsequent appointment.

2. In my opinion the subsequent appointment is a new cause of action, and, he is at liberty to do so if so advised.

3. The Petition is accordingly allowed to be withdrawn. There shall be no order as to costs.

2. Perusal of this order shows that the petition filed under Section 34 of the Arbitration & Conciliation Act challenging the award dated 24-8-2004 made by the arbitrator under Section 84(i)(b) of the Multi State Co-operative Societies Act was withdrawn without reserving liberty to challenge the same award. It appears that the Respondent No.2 was again appointed as an auditor by the Annual General Meeting of the Society by Resolution dated 16-7-2004. The Petitioner wanted to challenge that appointment and therefore the

Court granted him liberty to challenge the appointment. It is obvious from this order that the liberty was granted to the Petitioner was liberty to challenge the appointment of the Respondent No.2 as auditor of the Respondent No.1 bank for a further period i.e. period after 31-3-2004 and not the award made by the arbitrator which was impugned in Arbitration Petition No.397 of 2004 and therefore the remedy of the Petitioner was to challenge the appointment of the Respondent No.2 as auditor for the period subsequent to 31-3-2004 under the provisions of the Multi State Co.operative Societies Act. There is no liberty granted by the Court to the Petitioner to challenge the award which was impugned in Arbitration Petition No.397 of 2004. What is challenged in the present petition is the same award dated 24-8-2004. In the petition the Petitioner also seeks a declaration that the subsequent Resolution dated 16-7-2004 is illegal. This court will not have power to make such a declaration without there being a challenge to the award itself and as the remedy of the Petitioner to challenge the award dated 24-8-2004 is abandoned by the Petitioner by withdrawing his Arbitration Petition No.397 of 2004, the only remedy now

available to the Petitioner is to challenge the appointment by making a claim under Section 84 of the Multi State Co-operative Societies Act. The present petition cannot be entertained. In fact filing of the present petition itself is misconceived and incompetent. Petition disposed of.

Certified Copy expedited.

...